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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,516	09/24/2003	Dun-Nian Yaung	TS02-398	4335
47390	7590	06/22/2005	EXAMINER	
THOMAS, KAYDEN, HOSTEMEYER & RISLEY LLP 100 GALLERIA PARKWAY SUITE 1750 ATLANTA, GA 30339			NGUYEN, THANH T	
			ART UNIT	PAPER NUMBER
			2813	

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,516

Applicant(s)

YAUNG ET AL.

Examiner

Thanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 22-37 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22-23, 25, 27-28, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Yaung et al. (U.S. Patent No. 6,372,603).

Referring to figures 2a-2e, Yaung et al. teaches a high quantum efficiency image sensor (see abstract) comprising:

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A well region (280) of a first conductivity (N-well) in a substrate (200) of the second conductivity (p, in substrate (200) opposite to the first conductivity wherein the well region (12) in the substrate forms a photodiode (280, see figure 2c); and

An isolation region (250) within the substrate (200) overlying edge portions of the photodiode (280, see figure 2c);

Wherein the isolation region (250) comprise a stop layer (260), located at a bottom of the isolation region and adjacent to the photodiode (see figure 2c); and

Wherein a dielectric layer (290, oxide) fills the isolation region (see figure 2d).

Regarding to claim 23, the well region is an N-well and the substrate is a P-substrate (see col. 4, lines 1-3).

Regarding to claim 25, the isolation region is a shallow trench isolation (STI, col. 3, lines 8-9).

Regarding to claim 27, the stop layer (260) has the thickness of about 300-1000Å (see col. 3, lines 24-26)

Regarding to claim 28, the dielectric layer (290) is comprise silicon oxide (see col. 3, lines 55-56).

Regarding to claim 31, a refraction index of the stop layer (260, silicon oxide is $k=1.3$) is over than a refraction index of the well region (280, $k=3.3$).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 26-27, 29, 30, 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaung et al. (U.S. Patent No. 6,372,603) as applied to claims 22-23, 25, 27-28, 31 above, in view of Rhode (U.S. Patent Publication No. 20020089004).

Yaung et al. teaches a high quantum efficiency image sensor having a well region is an N-well and the substrate is a P-substrate, a stop layer, and the interlevel dielectric layer. However, the Yaung et al. does not teach Well region is a P-Well and the substrate is the N-substrate, the stop layer comprises silicon nitride or silicon oxynitride and the thickness of the layer.

Referring to figures 6-14, Rhodes teaches a photosensor with a stop layer, wherein the stop layer comprises silicon nitride or silicon oxynitride (328, see paragraph #53). Noted that since the stop layer is made of silicon nitride which has the refractive index is less than the well region (silicon doped phosphorus in Yaung et al.) and higher refractive index than the dielectric layer (SiO₂ in Yaung et al.)

Therefore, it would have been obvious to a person of ordinary skill in the requisite art at the time of the invention was made to form the stop layer by using silicon nitride or silicon oxide or silicon oxynitride in process of Yaung et al. as taught by Rhodes because the material would

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prevent overetch.

It is known in the art to interchange the N-well and P-substrate to P-well to the N-substrate to have an n device or p device.

The specific thickness range are considered to involve routine optimization while has been held to be within the level of ordinary skill in the art. As noted in *In re Aller*, the selection of reaction parameters such as temperature and concentration would have been obvious:

Normally, it is to be expected that a change in temperature, or in concentration, or in both, would be an unpatentable modification. Under some circumstances, however, changes such as these may impart patentability to a process if the particular ranges claimed produce a new and unexpected result which is different in kind and not merely degree from the results of the prior art...such ranges are termed Acritical ranges and the applicant has the burden of proving such criticality.... More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

In re Aller 105 USPQ 233, 255 (CCPA 1955). See also *In re Waite* 77 USPQ 586 (CCPA 1948); *In re Scherl* 70 USPQ 204 (CCPA 1946); *In re Irmscher* 66 USPQ 314 (CCPA 1945); *In re Norman* 66 USPQ 308 (CCPA 1945); *In re Swenson* 56 USPQ 372 (CCPA 1942); *In re Sola* 25 USPQ 433 (CCPA 1935); *In re Dreyfus* 24 USPQ 52 (CCPA 1934).

Therefore, one of ordinary skill in the requisite art at the time the invention was made would have used any thickness range suitable to the method in process of the Yaung et al. in order to optimize the process.

It would have been obvious to a person of ordinary skill in the requisite art at the time of the invention was made to optimize the thickness range of the layer, since it has been held that where the general conditions of a claim are disclosed in the prior art (i.e.-dielectric layer), discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

The specification contains no disclosure of either the critical nature of the claimed arrangement (i.e.- wherein the thickness the interlevel dielectric layer and a stop layer) or

any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen limitations or upon another variable recited in a claim, the applicant must show that the chosen limitations are critical. *In re Woodruff*, 919 F.2d 1575, 1578 (FED. Cir. 1990).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22-37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/626,061. Although the conflicting claims are not identical, they are not patentably distinct from each other because both of the present invention and the copending application teaches a plurality of layers covering the photodiode, wherein the first layers, located closest to the photodiode, has a higher index of refraction than a second layers, located farther from the photodiode than the first of the layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh Nguyen whose telephone number is (571) 272-1695, or by Email via address Thanh.Nguyen@uspto.gov. The examiner can normally be reached on Monday-Thursday from 6:00AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, Jr., can be reached on (571) 272-1702. The fax phone number for this Group is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956 (See **MPEP 203.08**).

A handwritten signature in black ink, appearing to read 'Thanh', with a large, sweeping initial 'T'.

Thanh Nguyen
Patent Examiner
Patent Examining Group 2800

TTN